

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**STATE OF OKLAHOMA, ex rel. W.A.
DREW EDMONDSON, in his capacity as
ATTORNEY GENERAL OF THE
STATE OF OKLAHOMA AND
OKLAHOMA SECRETARY OF THE
ENVIRONMENT C. MILES TOLBERT,
in his capacity as the TRUSTEE FOR
NATURAL RESOURCES FOR THE
STATE OF OKLAHOMA**

PLAINTIFFS

v.

CASE NO.: 05-CV-00329 GKF –SAJ

**TYSON FOODS, INC., TYSON
POULTRY, INC., TYSON CHICKEN,
INC., COBB-VANTRESS, INC., CAL-
MAINE FOODS, INC., CAL-MAINE
FARMS, INC. CARGILL, INC.,
CARGILL TURKEY PRODUCTION,
LLC, GEORGE’S, INC., GEORGE’S
FARMS, INC., PETERSON FARMS,
INC., SIMMONS FOODS, INC. and
WILLOW BROOK FOODS, INC.**

DEFENDANTS

**JOINDER BY TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN,
INC., AND COBB-VANTRESS, INC. IN THE CARGILL DEFENDANTS’ MOTION TO
STRIKE PLAINTIFFS’ “OMNIBUS MOTION” REGARDING ESI DISCOVERY**

Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc. and Cobb-Vantress, Inc. (“Tyson Defendants”) submit the following as their joinder in Cargill Defendants’ Motion to Strike Plaintiffs’ “Omnibus Motion” Regarding ESI Discovery (Dkt. No. 1279):

I. Adoption of Argument of Cargill Defendants

The Tyson Defendants agree that Plaintiffs’ Omnibus “Motion” is improper and clearly designed to distract this Court from Plaintiffs’ own egregious discovery abuses. Those abuses are the subject of numerous motions scheduled for hearing before the Court on September 27, 2007. The Tyson Defendants adopt and incorporate herein by reference the arguments advanced

by Cargill in Section I of its Motion to Strike Plaintiffs' Omnibus Motion (Dkt. No. 1279) and join the Cargill Defendants in requesting that Plaintiffs' Omnibus Motion be stricken.

II. Plaintiffs Have Mischaracterized The Tyson Defendants' Responses to Discovery

In an effort obscure their own undeniable discovery failures, Plaintiffs accuse each defendant, including the Tyson Defendants, of various forms of misconduct as it relates to discovery. Plaintiffs are attempting to mislead the Court. Although Plaintiffs seek no affirmative relief against the Tyson Defendants – a clear sign that Plaintiffs' allegations are baseless – a response is necessary to avoid any misperception by this Court. Plaintiffs complain that the Tyson Defendants' production of ESI was sparse or incomplete as of the filing of Plaintiffs' Omnibus Motion. Pltfs. Omnibus Motion, ¶ 15. Plaintiffs assertions are disingenuous. Plaintiffs knew that the Tyson Defendants' production of responsive information, including ESI, was ongoing as of the filing of their Omnibus Motion. Unlike Plaintiffs, who refuse to commit to a completion date for their own discovery responses, the Tyson Defendants have kept Plaintiffs fully apprised of the status of their document production. The Tyson Defendants advised Plaintiffs that the production would be completed in September.

On September 20, 2007, the Tyson Defendants completed their document production, including ESI.¹ Plaintiffs' statement that "Tyson's ESI production remains incomplete" is not accurate and their complaints about the "sparse" nature of the Tyson Defendants' ESI production are moot in light of the Tyson Defendants timely completion of their document production.

Even prior to the filing of Plaintiffs' Omnibus Motion, the Tyson Defendants had produced a considerable amount of ESI responsive to Plaintiffs' discovery requests. In fact, Exhibit 1 to Plaintiffs' motion clearly shows that the parties were discussing the considerable

¹ On September 13, 2007, Plaintiffs served additional Request for Production and Interrogatories. The Tyson Defendants' responses to those discovery requests are not yet due.

amount of information produced by the Tyson Defendants from databases pertaining to the size of houses, capacity of houses, number of houses, grower pay information and the amount of feed. *See* Ex. 1 to Pltfs. Motion. With regard to Exhibit 1 to Plaintiffs' Omnibus Motion, Plaintiffs intentionally omitted relevant written communications between the parties in an apparent attempt to make the Tyson Defendants appear uncooperative in discovery. Specifically, Plaintiffs failed to provide the Court with the written response of counsel for the Tyson Defendants to Mr. Garren's e mail of August 10, 2007. In the interest of completing the record, the response to Mr. Garren's email and Mr. Garren's reply e mail is attached hereto as Exhibit A. In the communications omitted by Plaintiffs, counsel for the Tyson Defendants explained that the summary information Mr. Garren was seeking through his August 10, 2007, e mail had already been extracted from the relevant databases and produced. *See* Ex. A, August 10, 2007 e mail from M. Bond to R. Garren. Mr. Garren replied "thank you" and the Tyson Defendants understandably concluded from that response that Plaintiffs' inquiries were satisfied.

Plaintiffs' attempt to fabricate a discovery complaint against the Tyson Defendants should be rejected by this Court. The Tyson Defendants have fully complied with all their discovery obligations under the Federal Rules and Plaintiffs have come forward with no evidence to suggest otherwise.

III. Conclusion

The Tyson Defendants urge the Court to strike Plaintiffs' omnibus "motion" as improper. In the alternative, to the extent Plaintiffs include an actual request for relief in any reply or in oral argument, the Tyson Defendants urge the Court to deny that request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 25th day of September 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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